

EXHIBIT A

1
2 Hazardous Waste Cleanup Act and that the amounts paid by Key
3 Tronic and Spokane County to perform the work are necessary
4 costs of response.

5 VIII. OBLIGATIONS OF CONSENTING PARTIES

6 A. Obligation of Key Tronic

7 The obligation of Key Tronic shall be limited solely to
8 payment into the Trust Fund established under this Consent
9 Decree of only the following amounts according to the following
10 schedule:

<u>Date</u>	<u>Amount</u>
Within 15 days of entry of this Decree	650,000
September 30, 1989	650,000
September 30, 1990	950,000
September 30, 1991	950,000
September 30, 1992	1,000,000

15 Nothing herein shall preclude Key Tronic from paying prior
16 to the date contained in this schedule. The obligation of Key
17 Tronic under this paragraph shall not be affected in the event
18 of a default by Spokane County.

19 B. Obligation of Spokane County

20 Spokane County shall comply with the relevant terms and
21 conditions of this Consent Decree and implement the Remedial
22 Action as specified in Appendix B. It is the intent of the
23 parties, that, with the exceptions provided in Sections XIX and
24 XXX, and consistent with Section XXV, any changes or mod-

(i) Whether the benefits from the expedition of the voluntary remedial action caused by the issuance of a covenant not to sue would exceed the potential future risk to human health and public finances caused by such issuance;

(ii) The nature of the risks that might remain at the facility;

(iii) The extent to which the remedial action is based on attainment of performance standards based on objective criteria for releases of substances to, or the presence of substances in, land, air, or water;

(iv) Whether the state toxics control account or sources of funding other than state general funds would be available for any additional remedial action that might eventually be necessary at the facility;

(v) Whether the monitoring and maintenance required at the site, if any, will protect human health and the environment; and

(vi) The extent to which the technology used in the remedial action is demonstrated to be effective.

(3) As a part of a settlement agreement with the department, the director may provide a covenant not to sue with respect to any remedial action taken if the cleanup level or levels have been established under RCW 70.105B.060(2)(c) and if:

(a) The director has determined that issuing the covenant is in the public interest as defined in subsection (2)(b) of this section;

(b) Compliance with the otherwise applicable standards is technically impracticable from an engineering perspective; and

(c) The remedial action provides optimum protection of human health and the environment.

(4) A "covenant not to sue" means a promise by the state of Washington, made with respect to a particular hazardous substance or a particular area, the cleaning up of which has been the purpose of a previous remedial action undertaken by the potentially liable person at the direction of the department and with the approval of the department. A covenant shall be commensurate with and strictly limited to the scope of the previous remedial action. In issuing the covenant, the state promises that, with respect to that substance or area, it will not initiate any future administrative or judicial action to force the potentially liable person to clean up, pay the expenses for cleaning up, conduct any investigations, or pay the expenses for any investigations. As used in this subsection, the word "investigations" does not include any monitoring or maintenance activities required under a covenant.

(5) A covenant may be issued with respect to all remedial actions included under a settlement agreement, or may be issued for one or more particular remedial actions included under a settlement agreement. If the remedial action is for cleaning up a particular hazardous substance, then the covenant does not extend to other hazardous substances. A covenant issued for a remedial action for cleaning up a particular hazardous substance shall contain an express reopener clause for the discovery of the release or threatened release of other hazardous substances.

(6) If the remedial action is for cleaning up a particular area, the covenant does not extend to other areas. Notwithstanding any other provision of this section, the issuance of a covenant for a particular area (as opposed to a covenant for a particular hazardous substance) is discretionary with the department, and shall only be issued for a remedial action that the department finds will ensure that (a) there will no longer be any foreseeable future risk in the area to human health or the environment and (b) all hazardous substances in the area are destroyed, eliminated, or permanently immobilized. In issuing an area covenant the department shall take special care to ensure that both the planned remedial action and its implementation conform to this chapter. A covenant issued for a particular area shall contain an express reopener clause for the discovery of the release or threatened release of hazardous substances outside such area. As used in this section, the term "particular area" means a precisely described three-dimensional area.

(7) The issuance of a covenant not to sue does not affect the power of the state to take whatever actions are necessary, other than those expressly barred by the covenant, to protect members of the public from a health hazard, including, but not limited to, actions to prevent entrance upon the property, to prevent the use of the property for any purpose that exposes anyone to a health hazard, or to enter upon the property and take measures to clean up the hazardous substance. The issuance of a covenant does not affect any power of the state to institute or respond to any tort action or any other judicial or administrative action, so long as the state's action or response is not expressly barred by the covenant. With respect to any action filed against the state, a covenant does not bar the state from filing a cross-claim,

counterclaim, or third party action against any person who may be liable or from seeking contribution from the person, so long as the damages or relief sought by the state in filing the cross-claim, counterclaim, or third party action is not expressly barred by the covenant.

(8) The director, with the concurrence of the attorney general, shall incorporate any covenant to be issued into the settlement agreement. The director's denial of a covenant meeting the requirements of subsection (1) of this section is reviewable under RCW 70.105B.130. The director's denial of a proposed covenant under subsections (2) or (3) of this section is not subject to review. Any covenant not to sue shall be conditioned upon satisfactory performance of the settlement agreement and issuance of a certificate of completion pursuant to RCW 70.105B.090. A covenant ceases to be conditional and becomes effective on the date of certification of completion of the agreement.

(9) If new information is revealed while implementing a settlement agreement, the potentially liable persons and the department may amend the agreement. If the new information reveals a significant quantity of a hazardous substance or condition not previously identified in the agreement as being present at the site, in an area of the site other than that described in the agreement, or in quantities significantly greater than as described in the agreement, then the agreement shall be amended. If a proposed amendment is to be incorporated into a final consent decree, public notice and opportunity to comment shall be allowed by the court prior to its entry in accordance with RCW 70.105B.070(5). The department shall adopt rules providing a method for amending agreements. The existence of a covenant not to sue having conditional status pursuant to subsection (8) of this section neither bars amendments to settlements nor may be considered in deciding whether or not to amend settlements.

(10) A person receiving a covenant not to sue under this chapter is not relieved of any liability owed to persons, other than the state of Washington, under any federal, state, or local law, including the common law.

(11) Issuance of a covenant not to sue to a potentially liable person does not relieve or decrease any other person's liability to the state. [1987 3rd ex.s. c 2 § 8.]

Reviser's note: The expiration date for 1987 3rd ex.s. c 2, which included the section that became RCW 70.105B.080, was made contingent upon the results of the November 1988 general election. See notes following chapter 70.105B RCW digest, this volume.

Severability—Section captions—1987 3rd ex.s. c 2: See notes following RCW 70.105B.010.

Transfer of funds—Savings—Retroactivity—1987 3rd ex.s. c 2: See note following RCW 70.105B.230.

70.105B.090 Certification of completion. (Expires 12/8/88 or 3/1/89.) (1) Upon completion of all remedial actions called for in a settlement agreement, the parties to the agreement may apply for a certificate of completion from the department. The department shall provide notice of an application for certification of completion to interested persons and the public. The notice shall include a brief analysis of the application and indicate where additional information may be obtained. Public comment shall be accepted for a minimum of forty-five days from the date of the notice.

(2) The director shall grant or deny an application for certification of completion within ninety days of the application. If the director finds that the remedial action has been fully implemented, the director shall approve an application for certification of completion. [1987 3rd ex.s. c 2 § 9.]

Reviser's note: The expiration date for 1987 3rd ex.s. c 2, which included the section that became RCW 70.105B.090, was made contingent upon the results of the November 1988 general election. See notes following chapter 70.105B RCW digest, this volume.

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70.105B.100 Remedial action contractor liability. (Expires 12/8/88 or 3/1/89.) (1) A person who is a remedial action contractor, or a person employed by any public body who provides services relating to remedial action, and who is working within the scope of the person's employment with respect to any release or threatened release